TAXATION: No time limitation on assessment of omitted property.

April 5, 1934.

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Hon. Tom G. Spratt
Assistant Attorney
Office of Solicitor
U. S. Dept. of Agriculture
Rose Cliff Hotel
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My Dear Sir:

We acknowledge receipt of your letter respecting the assessment of omitted property under Section 9788 R. S. Mo. 1929, and in accordance with such communication render the following opinion. Your letter reads in part as follows:

> "I have been placed temporarily in charge of title work in connection with the acquisition of lands for National Forests in the State of Missouri, and in compiling notes to govern our requirements in the purchase of these lands I ran across Section 9788 of the Revised Statutes of Missouri, and it appears from this section that if any lands were left off the assessment roll in any year it is the duty of the assessor to back tax this property in the current year or the year in which such non-assessment was discovered. In this connection see also 178 Mo. 229, 186 Mo. 205 and 177 S.W. 608. It does not appear that there is any statute of limitations governing this type of assessment, although we do find a statute limiting the collection of delinquent taxes to five years where the assessment has already been made and the land is actually delinquent.
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> * * * * * * * * * * *
>
> Since a great many of the old tax records in this section of the state have been destroyed, it is going to be absolutely impossible to show assessment and payment of taxes on these lands from the date of issuance of patent." * * *

I.

OMITTED PROPERTY MAY BE ASSESSED AT ANY TIME.

Under the provisions of Sections 9788 and 9789 R. S. Mo. 1929, any property which has been omitted from the assessment rolls may at any time be placed thereon and the taxes levied on such assessment.

> "If the assessor discovers any real property, * * *which has not been returned to him* * * he shall assess such property and enter the same on the assessment list.* * * * *"

> "If by any means any tract of land or town lot shall be omitted in the assessment of any year or series of years, and not put upon the assessor's book, the same, when discovered, shall be assessed by the assessor for the time being, and placed upon his book before the same is returned to the court, with all arrearages of tax which ought to have been assessed and paid in former years charged thereon."

This is the clear intendment of these two sections and they have been so construed by our Supreme Court. In the case of State ex rel. Hammer vs. Vogelsang, 183 Mo. 17, the Court made the following remark respecting Section 9789, l. c. 23:

> "This statute was enacted in 1872 and has been the law ever since; it was the law during the years the defendant's property was omitted from the assessor's books. It was in effect a proclamation to the property owner during all those years that if his property was omitted from the assessor's books then it would be assessed for the omitted period thereafter, whenever the omission should be discovered.* * * *"

It has also been determined that the five year statute of limitations against the institution of suits for taxes does not apply to the original assessment of taxes. Further, that such five year limitation does not commence to run until the taxes are actually assessed. The Hammer case, supra, considered the assessment made in 1896 of taxes for the years 1885 and 1890 and stated, l. c. 24:

"The suit is not barred by the statute of limitations. No right of action accrued until the taxes were assessed and had become delinquent. The assessment was made in 1896, the taxes were therefore not delinquent until January, 1897. The five years' limitation expired January 1, 1902. The suit was brought December 16, 1901.* * * *"

This seems to be the established case law on the subject in this State and the Legislature has not enacted any time limitation upon the assessment of property. However, we believe that from a practical standpoint the lack of a statute of limitations should not concern you.

II.

ASSESSOR WILL BE PRESUMED TO HAVE INCLUDED ALL PROPERTY IN ASSESSMENT ROLLS THAT WAS SUBJECT TO TAXATION.

Under the statutes of this state the County Assessor is prescribed certain definite duties to be performed in connection with the assessment of property. A portion of these duties are found in Section 9756 R. S. Mo. 1929, from which we quote the following:

"The assessor or his deputy or deputies shall between the first days of June and January,* * proceed to take a list of the taxable personal property in his county, town or district, and assess the value thereof, in the manner following to-wit:* * * *Such lists shall contain; first, a list of all the real estate and its value, to be listed and assessed on the first of June, 1893, and every year thereafter, anything in this or any other section to the contrary;* * * *"

By reason of the foregoing statute the County Assessor is required as a duty and obligation of his office to assess all real estate which is subject to taxation in his county. The requirements of this Section are definite and certain and although the method of obtaining the information may be considered as directory it is certainly <u>mandatory</u> upon the assessors to include <u>all taxable property</u> on his assessment roll. Being required under the statute to perform

these specific duties, the law will presume that they have been properly and fully executed in the absence of a clear and conclusive showing to the contrary. Under the facts as related in your letter such a showing would be absolutely impossible. We find authority for the foregoing statement in the following cases.

In the case of State ex rel. Shannon County vs. Hawkins, 169 Mo. 615, l. c. 621, we find the following statement:

> "* * * we agree with respondent that this ignores the ordinary presumption that every officer does his duty, and leaves out of consideration the checks and balances placed in the hands of the county courts to refuse credit on the collector's lists until they are satisfied he has exhausted his remedies against the personalty of the delinquents." * * *

In that case the presumption went to the question as to whether or not the County Collector had used due diligence to collect taxes before they became delinquent. As the statute placed upon the Collector the duty of making every effort to collect the taxes before becoming delinquent, the Court presumed, absent a distinct showing to the contrary, that the County Collector had exerted every effort to collect the taxes before returning them as delinquent when making his annual settlement with the County Court.

In the case of Van Pelt vs. Parry, 218 Mo. 680, we find the following statement, l. c. 698:

> "* * * It matters little either to law or justice that the commissioners in 1856 may have believed, and that the county court of Barton county then may have been of the opinion, that the Parry forty was not swamp land and that the county got title through Parry's original deed in 1856. The thing done is the substance and heart of the matter, not what was believed, and the thing done in this instance was to locate a county seat upon the county's own land in 1856. To these ancient official acts the presumption is applied that officials charged with a duty performed that duty by tracking the law and doing what the law either commanded or contemplated they should do." * * *

In the more recent case of Smith v. Vickery, 235 Mo. 413, we find this rule applied in that case, l. c. 420:

> ** * * *Scott says that in 1881 and 1882 while he was sheriff and ex-officio collector of Pemiscot county, he brought and prosecuted a suit to collect the taxes on the land in dispute, and many other similar suits for taxes due on other lands; 'that he always brought suit against the land as well as the man' (the owner of the land). That at the request of the county court, he employed two competent lawyers to assist him with the suits, and in making deeds after the sales took place. From this evidence, we are warranted in supposing that the tax suit upon which defendants' title rests was brought and prosecuted to judgment against the owner of the land, to foreclose the State's lien for taxes; and that the original files and records of the circuit court, if in existence, would show that said suit and judgment were in conformity with the law. <u>There is always a presumption in the absence of positive evidence to the contrary, that public officers perform their duty in the manner directed by law</u>" * * **

For other applications of this rule, we cite you to the cases of State ex rel. Thompkins vs. Harris, 208 Mo. App. 661, and Hammond vs. Gordon, 93 Mo. 223.

CONCLUSION.

Applying the law as established by the decisions of our Supreme Court to the facts presented in your letter, it would be our opinion that in view of the fact that the ancient assessment rolls in these counties have been lost or destroyed, the presumption that the County Assessor fulfilled his statutory duty and had assessed all taxable property, would prevail.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK,
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HGW:MM